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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 09/903,785 | 07/13/2001 | Laurence Sebillotte-Arnaud | 210374US0 | 1492 |
| 22850 | 7590 | 10/02/2007 | | |
| OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314 | | | | |
| | | | EXAMINER | |
| | | | OGDEN JR, NECHOLUS | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1751 | |
| | | | NOTIFICATION DATE | DELIVERY MODE |
| | | | 10/02/2007 | ELECTRONIC |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com
oblonpat@oblon.com
jgardner@oblon.com

Office Action Summary

Application No.

09/903,785

Applicant(s)

SEBILLOTTE-ARNAUD ET AL.

Examiner

Necholus Ogden

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8-13-2007 has been entered.

Claim Rejections - 35 USC § 112

2. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The aforementioned claim states that the polyethylene glycol has ethylene oxide units from greater than 800. This limitation is considered new matter because applicant does not have support for an infinite number of ethylene oxide units nor does applicant have support for the data point of 800. Applicant's specification specifically teaches a range of 10-50,000 ethylene oxide units for polyethylene glycols (see specification at page 10) and the examples show PEG-180 as an exemplified data point. Therefore, appropriate corrections and/or clarification is required.

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Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

1. Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glenn, Jr. et al WO (96/28140) or Glenn, Jr. et al (6,277,797).

2. The disclosures of WO '140 and '797 are similar. Therefore, the column and line reference is to the WO '140 reference.

Glenn, Jr. et al discloses a skin cleansing composition comprising 0.5 to 10 parts by weight of fumed silica (page 5, lines 4-37); 30-80 parts by weight of water (page 17, lines 5-11); 5-30 parts by weight of a lathering surfactant such as alkyl ether sulfate, betaines, alkyl polyglucosides and polyoxethylene esters of fatty acids (page 15, line 34-page 17, line 4), and optionally 0.5-20% by weight of polyols such as polyethylene glycol (page 17, line 21-page 18, line 28).

Glenn, Jr. et al do not specifically teach each of the components with sufficient specificity to anticipate the claims.

It would have been obvious to one of ordinary skill in the art to have formulated to the claimed skin cleansing composition as suggested by Glenn, Jr. et al because such skin cleansing compositions of Glenn, Jr. et al teach and require each of the claimed components in their requisite proportions and would have been obvious to the skilled artisan in the absence of a showing to the contrary.

Response to Arguments

3. Applicant's arguments filed 8-13-2007 have been fully considered but they are not persuasive.

Applicant argues that the specification fully satisfies the requirement of 112 first paragraph, wherein the polyethylene glycol component has ethylene oxide units greater than or equal to 800, in light of the CTFA handbook, which describes the PEG-800 as a

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viscosity-increasing agent and *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976).

The examiner contends that the CTFA handbook discloses PEG-800 as an anti-caking, binder, humectants, plasticisers and viscosity-increasing agent, Glenn, Jr. et al disclose polyethylene glycols as humectants, wherein the skilled artisan would expect the polyethylene glycols of Glenn, Jr. et al to function in an equivalent manner given they encompass similar characteristics. However, the fact that CTFA describes the specific PEG-800 as a viscosity-increasing agent does not satisfy the first paragraph under 112 requirement because does not have support that would have been inherent for PEG-800 when the general teachings were from a range of 10-50,000 ethylene oxide units for polyethylene glycols (see specification at page 10) and the examples show PEG-180 as an exemplified data point. Note, MPEP 2162 states with respect to changing numerical range limitations, the analysis must take into account which ranges one skilled in the art would consider inherently supported by the discussion in the original disclosure. *Purdue Pharma L.P. v. Faulding Inc.*, 230 F.3d 1320, 1328, 56 USPQ2d 1481, 1487 (Fed. Cir. 2000). *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976), applicant had a range where a higher specific data point was exemplified and a lower data point that was inherent to the claimed range and examples. This is not germane to the instant application with a broad range of 10-50,000 ethylene oxide units and PEG-180 as the only specific data point exemplified.

Applicant argues that Glenn, Jr. et al do not teach or suggest alkoxylated thickening agents. Rather Glenn, Jr. et al disclose polyols that are used as humectants

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and solutes. Further, applicant argues that Glenn, Jr. et al do not suggest incorporating the polyols in a thickening amount.

The examiner contends and respectfully disagrees because Glenn, Jr. et al teach polyols such as polyethylene glycols having ethylene oxide units up to 200 and additional polyols such as sorbitol and glycerol (see Glenn, page 17, line 21-page 18, line 28). Moreover, applicant's specification and claims require the same ingredients and the only difference is that Glenn, Jr. et al recites the alkoxylated agents as humectants and solutes and the CTFA discloses PEG-800 as humectants. Therefore, it would have been obvious to one of ordinary skill in the art to expect the polyols of Glenn, Jr. et al to have similar characteristics as the same components of the claimed invention, in the absence of a showing to the contrary.

The reason or motivation to modify the reference may often suggest what the inventor has done, but for a different purpose or to solve a different problem. It is not necessary that the prior art suggest the combination to achieve the same advantage or result discovered by applicant. >See, e.g., In re Kahn, 441 F.3d 977, 987, 78 USPQ2d 1329, 1336 (Fed.Cir. 2006).

"An obviousness rejection based on similarity in chemical structure and function entails the motivation of one skilled in the art to make a claimed compound, in the expectation that compounds similar in structure will have similar properties." In re Payne, 606 F.2d 303, 313, 203 USPQ 245, 254 (CCPA1979).

Applicant argues that examples and comparative examples 1-3 show the many of the polyols of Glenn, Jr. et al compared with applicant's PEG-120 methyl glucose.

The examiner contends that criticality cannot be established because applicant's examples are not commensurate in scope with the claimed invention where applicant's alkoxylated compound may include several different ingredients (see claim 1) and the examples are narrowly limited to the specific PEG-120 methyl glucose in very specific proportions. Moreover, applicant does not compare the closest prior art against the claimed invention to effectively rebut the prima facie case of obviousness. Accordingly, applicant's claimed invention is suggested by the prior art of record, Glenn, Jr. et al, since the compounds of Glenn, Jr. et al are disclosed by applicant's specification and claims and further, applicant does not require any viscous limitations or proportions that are outside of the scope of Glenn, Jr. et al.

Applicant further argues that comparative example 2 does not comprise PEG-120 and is unacceptable.

Again, the comparative example is not indicative of the compositions of Glenn, Jr. et al because said composition is not representative of Glenn, Jr. et al nor commensurate as such. Therefore, criticality cannot be established.

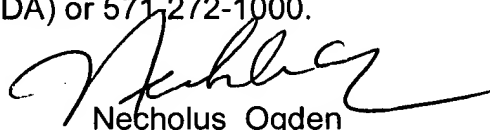
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Necholus Ogden whose telephone number is 571-272-1322. The examiner can normally be reached on M-Thu.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on 571-272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Nicholas Ogden
Primary Examiner
Art Unit 1751

No
9-25-2007